

MINUTES OF SEPTEMBER 10, 2018

The regular meeting of the Sussex County Board of Adjustment was held on Monday, September 10, 2018, at 7:00 p.m. in the County Council Chambers, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman John Mills presiding. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Janelle Cornwell, Planning and Zoning Director, Mr. Jamie Whitehouse – Planning Manager, and Mrs. Ann Lepore– Recording Secretary.

The Pledge of Allegiance was led by Mr. Mills.

Motion by Mr. Mears, seconded by Mr. Callaway, and carried unanimously to revise the agenda to hear case 12195 prior to 12194 and approve the agenda as revised. Motion carried 5 – 0.

Motion by Mr. Callaway, seconded by Mr. Mears, and carried unanimously to approve the Minutes and Findings of Facts for June 18, 2018. Motion carried 5 – 0.

Motion by Ms. Magee, seconded by Mr. Callaway, and carried unanimously to approve the Minutes and Findings of Facts for July 9, 2018. Motion carried 5– 0.

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the case.

OLD BUSINESS

Case No. 12188 – Allen Harim Foods LLC requests to change the condition of approval found in Paragraph 63(p)(ii) of the Findings of Fact regarding wastewater treatment for Board Case No. 12113 (Sections 115-214 of the Sussex County Zoning Code). The property is located on the northwest corner of Pinnacle Way and Iron Branch Rd. (Rt. 331). 911 Address: 29984 Pinnacle Way, Millsboro. Zoning District: HI-1. Tax Map: 233-5.00-14.00, 233-5.00-15.00, & 233-5.00-16.00

Ms. Magee recused herself from the hearing and left the Chambers.

Ms. Cornwell presented the request.

Mr. Mills stated that he reviewed the exhibits submitted at the hearing; and that he was confused by the opposition since they opposed the disposal of wastewater and cited environmental concerns but now object to the hauling of wastewater offsite.

Mr. Workman stated that he does not object to the Applicant hauling wastewater from the site prior to the installation of the spray irrigation system but that the spray irrigation system should be

operational within a year; that DNREC has control of the environmental issues related to the system; and that there would be no hauling of wastewater to the site.

Mr. Sharp stated that the Applicant does not seek to spray wastewater from other locations on the site; that the request would allow for hauling of wastewater from the Property to different locations for wastewater disposal; that the hauling of wastewater would be subject to DNREC permits; that this application does not pertain to the Applicant's Harbeson plant; that the Applicant has stated that it seeks to dispose of 40,000 gallons of wastewater per day; that the Board previously conditioned the special use exception approval and limited the size and scope of the use; and that the Applicant did not challenge that condition.

Mr. Workman stated that hauling of 40,000 gallons of wastewater per day would take approximately 6-7 trucks.

Mr. Sharp stated that the opposition submitted documentation indicating that they believed the Applicant was seeking to dispose of 600,000 gallons of wastewater per day but such wastewater disposal was not what was presented to the Board by the Applicant.

Mr. Workman stated that he does not object to the approval for hauling but he believes that the spray irrigation system should be operational within a year.

Mr. Sharp stated that the Board cannot issue the spray irrigation permit; that DNREC issues the spray irrigation permit; that he recalls that Everett Brown testified that a letter of intent would be submitted to DNREC; that the DNREC review process would take 3-6 months; that the Applicant would then take 6 months for permit processing with DNREC and an additional 7-8 months for construction at which time the Applicant could apply for an operational permit; and that there may be public hearings and appeals during that permitting process.

Mr. Mears stated that the Applicant would likely have an incentive to have the spray irrigation system in place.

Mr. Mills stated that he was concerned about comments made by the Applicant; that he is still perplexed by the opposition because they previously stated concerns about wastewater contamination of nearby wells but now they oppose the hauling of wastewater offsite; and that hauling of wastewater would appear to limit the concern.

Mr. Workman asked if the Board could limit the number of trucks.

Mr. Sharp stated that the Board has already limited the size and scope of the project; that enforcement and monitoring of the number of trucks used for wastewater hauling would be difficult for the County; that wastewater hauling is a DNREC permitting issue; that DNREC may have changing rules and regulations over time; and that DNREC has a specific purpose.

Mr. Mills stated that he believes the initial condition may not be necessary; that hauling of wastewater would seem to be appropriate; and that hauling of wastewater does not rise to the level of substantial adverse effect on traffic.

Mr. Mears stated that he needs more time to consider the Application.

Mr. Workman stated that he sees Mr. Mills' point and needs additional time as well.

Mr. Mears moved, seconded by Mr. Workman, and carried unanimously to **table Case No. 12188 until September 17, 2018**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Mears – yea Mr. Mills – yea, and Mr. Callaway – yea.

Ms. Magee returned to the Chambers.

PUBLIC HEARINGS

Case No. 12189 – Kruger Farms seeks a determination of a non-conforming use regarding a borrow pit (Section 115-202 of the Sussex County Zoning Code). The property is located on the south side of Fleetwood Pond Rd., approximately 0.52 miles southwest of Old Furnace Rd. and on the southside of Fleetwood Pond Rd. at the intersection of Old Furnace Rd. and Rum Bridge Rd. 911 Address: N/A. Zoning District: AR-1. Tax Parcels: 231-14.00-19.00 & 231-14.00-20.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. Ms. Cornwell stated that Applicant is requesting a determination for a non-conformity use; that aerial photographs dating back to 1968 show no borrow pit on the Property; that aerial photographs dating back to the 1990s show something on the Property that has grown in size and scope over the years; that there is no record of a conditional use for a borrow pit and no record of approvals.

Mr. Sharp stated that the Application is under our non-conforming use section of Code; that the issue before the Board is a factual one; that the Board must determine whether the use existed prior to the enactment of the Sussex County Zoning Code and has continued since that time; and that the Board has heard borrow pit non-conforming use cases in the past.

Tim Willard, Esquire, was present on behalf of the Applicant, presented the Application and submitted a petition from thirty-one (31) people in support of the Application.

Mr. Willard stated that Paul Kruger's father founded Kruger, Inc., in the 1940s; that the

Kruger family farms lands near Georgetown; that the Property is located off Fleetwood Pond Road; that there are approximately 250 acres; that a County inspector visited the Property approximately 11 years ago regarding the borrow pit; that Mr. Kruger purchased the parcels in 1972 and 1975; and that Mr. Kruger recalls purchasing dirt in the 1960s from the prior owner. Mr. Willard reviewed a timeline submitted as part of the record.

Mr. Willard stated that the picture includes an irrigation diagram; that the borrow pit will be limited due to the irrigation; that the pit has grown over the years; that State-owned property and property owned by the Dukes family are nearby; that he spoke with the attorney for the Dukes family; that the Dukes family does not object to the borrow pit; that there was an issue with a survey and the shared property line with the Dukes family but the issue appears to have been worked out; and that Mr. Kruger will dig a ditch near that property line.

Ms. Cornwell stated that the aerial photograph from 1968 was 2 years prior to the enactment of the Sussex County Zoning Code.

Mr. Willard stated that there is evidence that dirt was hauled out of the Property prior to the enactment of the Sussex County Zoning Code.

Paul Kruger was sworn in to give testimony. Mr. Kruger affirmed the statements made by Mr. Willard as true and correct.

Mr. Willard stated that the plan is to contain the borrow pit and that it is buffered by crops.

Mr. Cornwell stated that the Office has no record of an approval for a borrow pit on the Property and the Office received a complaint about the existence of the pit; and that the pit has clearly expanded multiple times over the years. Ms. Cornwell recited the standard for expansion of a non-conforming use under §115-200 of the Code.

Mr. Sharp stated that non-conforming uses can be expanded naturally; that there was a case in 1988 regarding non-conforming uses and borrow pits; that borrow pits, by their nature, result in natural expansion; that the degree by which the borrow pit expands is sometimes the issue; that, for example, if the borrow pit resulted in 25 truckloads per year, the non-conforming use was limited to 25 truckloads per year and could not be greatly expanded to a large, commercial enterprise; that there is a limiting factor in our Code as well regarding expansion of non-conforming uses; and that the Board can ask the Applicant questions about the intensity of the use.

Ms. Cornwell stated that farm ponds are different from borrow pits.

Mr. Willard stated that there has been aggressive expansion in recent years; that most of the Property is farmland; that the Property consists of 290 acres; that the pond is approximately 2 acres; that the dig area for the borrow pit is approximately 4-6 acres; and that the pond will not expand into

the farmland which is being irrigated.

Gordy Pusey was sworn in to testify about the Application. Mr. Pusey testified that he lives adjacent to the site and has lived there for 52 years; that the pit was a hole in the ground for many years; that his children used to play there; that he had safety concerns about the pit; that the pit was not used very often but 7-8 years ago hauling from the pit started more aggressively; that trucks are in and out for excavating; that the Applicant bought the Property from his wife's grandmother; that he agrees that the borrow pit has been in operation over fifty years and prior to the existence of the Code; that neighboring property is being developed; that the pit has been used since the 1960s; that he moved to his house in 1966; that the borrow pit was very small at that time; and that he noticed trucks taking dirt from the pit from time-to-time and that the excavations were more frequently than every couple of years.

The Board found that seven people appeared in favor and no one appeared in opposition to the Application.

Ms. Magee moved to approve the determination of a non-confirming use and existence of a borrow pit for Application No. 12189.

Motion by Ms. Magee, seconded by Mr. Callaway, and carried unanimously that the **borrow pit has existed as a non-confirming use on the Property and is a non-confirming use under the Sussex County Zoning Code.** Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

The Board took a ten (10) minute recess.

Case No. 12190 – Gary J. Barnes seeks a variance from the side yard setback requirement for a proposed structure (Sections 115-34 & 115-185 of the Sussex County Zoning Code). The property is located on the north side of Waterworks Ct., approximately 720 ft. west of Coastal Hwy. (Rt.1). 911 Address: 39622 Waterworks Ct., Bethany Beach. Zoning District: MR. Tax Parcel: 134-9.00-1134.00

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support of the Application, one letter in opposition to the Application and three mail returns. The Applicant seeks a variance of 2.5 ft. from the required 10 ft side yard setback on the east side for a proposed pool. Ms. Cornwell recited the concerns outlined by the opposition.

Gary Barnes and Eftihia Barnes were sworn in to give testimony and submitted pictures of the property.

Mr. Barnes testified that the Property is near a water tower; that there are 23 lots in the

neighborhood; that the Property is located along a dead-end street; that there are six other pools in the neighborhood and one more proposed for the lot next to him; that the house was placed on the center of the lot and not to one side as many others in the neighborhood were; that, due to the easements on the property, it cannot be otherwise developed; that the house was already on the lot when purchased; that the pool cannot go on the other side of the house due to the location of an underground propane tank and HVAC system; and that he was unaware of the easement prior to purchasing the lot.

Ms. Cornwell stated that a walkway of 3 feet is required around the pool and that the fence cannot be located in the easement area.

Mr. Barnes testified that the Property is unique; that most houses built in the side yard building setback area; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that the exceptional practical difficulty was not created by him; that the homeowners association supports the Application; that the variance will not alter the character of the neighborhood; and that neighboring property is rented.

Mr. Mears questioned whether a variance would be needed if the Property was 2 square feet smaller.

Ms. Cornwell stated that a variance would still be needed because the 10 feet requirement applies to small lots as well.

Ms. Barnes testified that the pool is the narrowest pool available.

Mr. Sharp questioned whether the pool, walkway, and fence can fit between the house and the easement area.

Ms. Cornwell stated that the Applicant may be able to construct the fence outside of the easement area but it will be tight.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mears moved to approve Variance Application No. 12190 for the requested variance for the following reasons:

1. The uniqueness of the property is due to the house being placed in the center of the property;
2. The Property cannot be otherwise developed without this variance due to the 10 feet setback requirement;
3. This situation was not created by the Applicant as he purchased the house that way;
4. The pool will not affect the essential character of the neighborhood as there are six pools in the neighborhood;

5. The requested variance is the minimum variance necessary to afford relief.

Motion by Mr. Mears, seconded by Ms. Magee, and carried unanimously that the **variance be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12191 – Gregorio O. Flores seeks a special use exception to place a manufactured home type structure for a medical hardship (Sections 115-40 and 115-210 of the Sussex County Zoning Code). The property is located on the southeast corner of Oriole Ln. and Herring Branch Rd. 911 Address: 9379 Oriole Ln. & 9168 Oriole Ln., Lincoln. Zoning District: GR. Tax Parcel: 230-14.00-148.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of the Application or in opposition to the Application and two (2) mail returns. Mr. Whitehouse stated that request is special use exception to use a manufactured home type structure for a medical hardship. There were two letters from medical providers regarding the medical hardship.

Marelin Ortiz Rosales was sworn in to give testimony about the Application.

Ms. Ortiz Rosales testified that her father is critically ill and her mother has diabetes; that currently she lives about one hour away; that her mother and father have a manufactured home on the Property; that her daughter is mentally challenged; that she could be there to help out with her aging parents; that she intends to build a stick-built home and then her parent's home becomes the manufactured home for the medical hardship.

Ms. Cornwell advised the Board that the Applicant can build the house and retain the manufactured home provided that all setback requirements are met and the special use exception is approved.

Ms. Ortiz Rosales testified that she is aware the manufactured home will have to be removed if the medical hardship no longer exists; that the house and property are well-maintained; that there are other manufactured homes in the neighborhood; that the home will comply with all the required setbacks; that the home will not substantially adversely affect the uses of adjacent neighboring properties; that the Property is served by well and septic and they will meet with DNREC about the well; and that the sheds on the Property will be removed for the home.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mears moved to approve Application No. 12191 for the requested special use exception

for a period of two (2) years as it will not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Mears, seconded by Mr. Callaway, and carried unanimously that the **special use exception be granted for a period of two (2) years**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12192 – Esham Real Estate, Inc. seeks a variance from the maximum fence height requirement for an existing structure (Sections 115-34, 115-182 & 115-185 of the Sussex County Zoning Code). The property is located in the White Creek Manor Subdivision fronting on Hickman Dr. and Old Mill Rd. 911 Address: 711 Hickman Dr., Ocean View. Zoning District: MR. Tax Parcel: 134-12.00-1043.00

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant seeks a variance of 0.5 feet from the 3.5 feet maximum height for a fence on a through lot along Old Mill Road.

Vernon Esham was sworn in to give testimony about the Application.

Mr. Esham testified that the fence behind the dwelling is a vinyl fence measuring 4 feet tall; that he called Sussex County about the permit and was informed that he could have a fence measuring 4 feet tall; that he initially wanted to have a fence measuring 6 feet tall; that the fence is needed for privacy from the road; that, when he called for an inspection, he was told that he could only have a fence measuring 3.5 feet tall; that the Property is unique because the Property has two front yards; that the Property cannot otherwise be developed because the HOA rules only allow a white, vinyl fence and vinyl fences are only available at a height of 4 feet; and that this was not created by the Applicant because he relied on information from Sussex County when building the fence.

Ms. Cornwell explained the 3.5 feet tall height limitation in front yards.

Mr. Esham testified that there are other fences in the neighborhood; that it will not alter the essential character of the neighborhood as this is what the HOA requests to be installed; that it is the minimum variance to afford relief; that the fence will not affect visibility on Old Mill Road; that there is no access to Old Mill Road from the Property; that there is approximately 5-10 feet from the edge of pavement of Old Mill Road to the property line; and that, if the request is denied, he will remove the fence and plant shrubs.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mears moved to approve Variance Application No. 12192 for the requested variance for the following reasons:

1. The uniqueness of the property is that it is a through lot;
2. The Applicant cannot develop the fence without this variance;
3. The Applicant did not create the exceptional practical difficulty;
4. The Applicant received misinformation regarding the height of the fence;
5. The variance will not affect the essential character of the neighborhood; and
6. The requested variance is the minimum variance necessary to afford relief.

Motion by Mr. Mears, seconded by Ms. Magee, and carried unanimously that the **variance be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12193 – Stockley Materials, LLC seeks a special use exception for an off-premise sign (Sections 115-80, 115-81, 115-159.5 & 115-210 of the Sussex County Zoning Code). The property is located on the east side of DuPont Blvd. (Rt. 113), approximately 434 ft. north of Governor Stockley Rd. 911 Address: 25113 DuPont Blvd. (Rt. 113), Georgetown. Zoning District: C-1/AR-1. Tax Parcel: 133-6.00-126.00

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and one (1) mail return. Ms. Cornwell noted that the off-premise sign is to be located in the C-1 district.

Ken Adams and Mark Davidson were sworn in to give testimony about the Application.

Mr. Davidson testified that he is the engineer for the project; that the Property is located on the east side of Route 113 and consists of 1.5 acres; that the front portion of the site is zoned C-1 and the rear portion is zoned AR-1; that the sign will be located on the C-1 portion of the Property; that DelDOT has submitted a letter of no objection to the sign; that the sign will measure 300 square feet per side and is smaller than the maximum size requirement for such signs; that the sign will measure 35 feet tall and the bottom of the sign will be 23 feet from ground level; that the sign will be back-to-back and will be wrapped in a poster style; that the Applicant owns land to the north and across the highway where it operates Melvin Joseph and Stockley Tavern; that the off-premise sign is intended to advertise the Applicants' businesses in the area; that the sign will meet all height, size, and setback requirements for this sign; that the closest off-premises sign is approximately 744 feet to the north; that there are no on-premises signs within 50 feet of the sign; that there is an elevated sand mound nearby; that the site is used by Iron Source but Iron Source will not be advertising on the sign; that the sign will not adversely affect the use of neighboring properties as the neighboring properties are commercial and owned by the Applicant; that there is no adverse impact on fire, hazard, public health,

or safety; that no variances are being requested; and that the sign will be on a monopole and will be illuminated but will not be an electronic message center.

The Board found that no parties appeared in support of or in opposition to the Application.

Ms. Magee moved to approve Application No. 12193 for the requested special use exception as it will not substantially affect adversely the uses of adjacent neighboring properties.

Motion by Ms. Magee, seconded by Mr. Callaway, and carried unanimously that the **special use exception for an off-premises sign be granted**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12195 – SS-LS-DE, LC d/b/a SS-LS-DE, LLC requests a special use exception to use a manufactured home type structure as an office (Sections 115-80 & 115-210 of the Sussex County Zoning Code). The property is located on the southeast side of Discount Land Rd., approximately 253 ft. northeast of Sussex Hwy. (Rt. 13). 911 Address: 29285 Discount Land Rd., Laurel. Zoning District: C-1. Tax Parcel: 232-12.00-63.01

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant seeks a special use exception for a period of five (5) years to use a manufactured type home to use for security at its multi-unit, mini-storage facility.

Gary Kreppon was sworn in to give testimony. Nicole Faries, Esquire, was present on behalf of the Applicant and presented the Application.

Ms. Faries stated that the Applicant is requesting a five (5) year extension for the special use exception to use a manufactured home type structure at its multi-unit, mini-storage facility; that the manufactured home-type structure has been on the Property since 1992; that special use exception approvals were granted in 2008 and 2013; that the Applicant filed this application prior to the expiration of the latest approval; that the Applicant purchased the Property in 2012; that the structure is used to house surveillance equipment and is used as an office when a security guard is on premises; that the use will not substantially affect adversely the uses of adjacent neighboring properties because it has been there since 1992 and has increased security for neighboring properties; that the structure benefits neighboring properties; and that there are other manufactured homes in the area.

Mr. Kreppon affirmed the statements made by Ms. Faries as true and correct. Mr. Kreppon testified that he is the manager of the Property and does not have information regarding the long-term plans for the manufactured home; that there is a manufactured home on neighboring lands; that the structure is well-maintained; and that there have been no complaints from neighbors.

Ms. Faries stated that the owner of the Property lives in Texas and she offered to follow up with the owner for additional information if the Board so required.

The Board found that no parties appeared in support of or in opposition to the Application.

Ms. Magee moved to leave the hearing for Case No. 12195 open for the limited purpose of obtaining information prior to September 14, 2018, from the property owner regarding the long-term plans for the manufactured home type structure and to add the case to the agenda of the September 17, 2018, meeting.

Motion by Ms. Magee, seconded by Mr. Callaway, and carried unanimously to **allow the record to remain open for the stated limited purpose**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12194 – Country Rest Home, Inc. requests a special use exception to operate a convalescent home, nursing home, and/or home for the aged (Sections 115-23 & 115-210 of the Sussex County Zoning Code). The property is located on the east side of Hickman Rd., approximately 776 ft. south of University Rd. and at the northeast corner of University Rd. & Hickman Dr. 911 Address: N/A Zoning District: AR-1. Tax Parcels: 530-9.00-4.00 & 530-4.00-23.00

Ms. Magee recused herself from the hearing and left the Chambers.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support of and one letter in opposition to the Application and one mail return. Ms. Cornwell read the letter of opposition into the record. The Applicant submitted exhibit booklets which were presented to the Board.

Mark Yoder and David Heatwole were sworn in to give testimony about the Application. David Hutt, Esquire, appeared on behalf of the Applicant to present the Application.

Mr. Hutt stated that exhibit notebooks had been delivered to the Planning and Zoning office and asked that Board members refer to the books during his presentation; that Mr. Yoder owns the Property and Mr. Heatwole is the engineer for the project; that the Property is zoned AR-1 and the Application is for a special use exception for a senior assisted-living facility; that the Application is not a site plan review; that other agencies oversee the project as well; that the Country Rest Home is a nursing home; that the Greenwood Country Retirement Community is located nearby as well; that neighbors support the Application; that there is an agricultural easement nearby; that the Property is in a Level 4 area; that the wetlands have been delineated; that the convalescent center was built in 1954 and predated the enactment of the Sussex County Zoning Code; that, since 1988, numerous

special use exception applications have been approved to add to the convalescent center; that Country Rest Home and the Greenwood Country Retirement Community were built over 7 parcels consisting of approximately 60 acres and include a 56 bed nursing home and 47 single-family units; that the facility needs to expand; that a conditional use application was filed with the Planning & Zoning Commission; that the project proposed 35 homes and 45 apartments; that Planning & Zoning tabled the application and later said that the project was more appropriate for a special use exception than a conditional use; that the project will use well water and private sewer; that DelDOT found that the project will result in fewer than 50 trips per hour and did not require a traffic impact study; that the traffic impact is negligible; that the project will meet all storm water regulations; that there is a need for these types of facilities based on census data; that there is a waiting list for the community; that the apartments provide a continuum of care; that the site plan needs to be reviewed; that there are no issues with the fire company; that the facility does not produce much noise; that there are no light, noise, or smell problems from the facility; that the project will not affect the aesthetics of the neighborhood; and that neighbors support the project.

Mr. Yoder and Mr. Heatwole affirmed the statements made by Mr. Hutt as true and correct.

Mr. Yoder testified that he has received no complaints about the facility; that the units will be leased; that the existing facility has been built to capacity and that he is surprised it has grown as much as it has.

John David, Robert Layton, William B. Wright, and Jack Lucia were sworn in to give testimony in support of the Application.

Mr. David testified that his parents live in the senior living facility also owned by Country Rest Homes; that Mr. Yoder goes above and beyond providing services to the residents; and asked the Board to approve the Application.

Mr. Layton testified that he has lived in the community for 11 years and believes that it is an ideal site; and that he supports the Application.

Mr. Wright testified that he lives in the community and loves it; that he is 87 years old and he supports the Application. He submitted a letter in support.

Mr. Lucia testified that he lives in the neighborhood and is thrilled with the project; that he regrets he did not move to the area sooner; that he supports the Application; and that the houses and properties are well-maintained.

Paul Reiger was sworn in to give testimony in opposition to the Application.

Mr. Reiger testified that assisted living facilities should be commercially zoned and not subject to a special use exception; that he questions the Planning & Zoning Commission hearing; and

that he believes it should go to County Council for final review.

The Board found that ten (10) parties appeared in support of the Application.

The Board found that one (1) party appeared in opposition to the Application.

Mr. Mears moved to approve Application No. 12194 for the requested special use exception as it will not substantially affect adversely the uses of adjacent neighboring properties, to adopt the Applicant's proposed findings of fact, and to include the twelve (12) conditions proffered by the Applicant. Those conditions are as follows:

1. The Applicant shall consolidate Sussex County Tax Parcel Nos. 5-30-4.00-23.00 and 5-30-9.00-4.00 into one tax parcel.
2. The assisted living facility shall contain no more than 35 single-family homes and a building consisting of no more than 42,500 square feet containing 22 single bedroom and 23 two-bedroom apartments to allow for aging in place along with ancillary uses.
3. The 45-unit (apartment style) facility shall be set back a minimum of sixty (60) feet from the property line adjacent to Hickman Road.
4. All entrances, intersections, inter-connection, roadway, and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's requirements.
5. The facility (including the single-family homes and the 45-unit apartment-style building) shall be served by a privately operated, on-site sanitary sewer treatment plant and disposal system subject to regulations of the Department of Natural Resources and Environmental Control ("DNREC") governing the design, installation, and operation of on-site wastewater treatment and disposal systems.
6. The facility (including the single-family homes and the 45-unit apartment-style building) shall be served by private on-site well(s) subject to DNREC approval and the Delaware Department of Public Health. The system shall be designed and installed to provide adequate drinking water and fire protection as required by applicable regulations.
7. Storm water management and erosion and sediment control facilities shall be constructed in accordance with applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices. The Final Site Plan shall contain the approval of the Sussex Conservation District.
8. The Applicant shall provide agricultural buffers and wetland buffers, as necessary, in accordance with the applicable regulations. The Agricultural Use Notice (3 Del. C. § 910) shall be included in all leases for units on the Property.
9. The Applicant shall submit as part of the Site Plan Review a landscape plan showing the proposed tree and shrub landscape design.
10. The Applicant shall retain as much of the existing trees and other vegetation along the boundaries of the Property unless removal is necessary for storm water management or other site conditions and shall use the vegetation to create a twenty (20) foot forested buffer along the sides and

rear of the Property.

11. All fire safety and protection requirements, including, but not limited to fire lanes, fire hydrants, and fire department connections, shall be reviewed, approved, and installed according to the State of Delaware Fire Prevention Regulations.

12. Preliminary and Final Site Plans shall be subject to the review and approval of the Planning & Zoning Commission.

Motion by Mr. Mears, seconded by Mr. Workman, and carried unanimously to grant the **special use exception to operate a convalescent home, nursing home, and/or home for the aged with conditions**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Meeting was adjourned at 10:21 p.m.